



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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January 12, 1998

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JAN 13 1998

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

SUBJECT: Replacement Page in MURs 4407 and 4544

EXECUTIVE SESSION

SUBMITTED LATE

The First General Counsel's Report in MURs 4407 and 4544 was objected to and placed on the agenda for January 13, 1998. We ask that the attached replacement page be placed on the agenda for consideration with the First General Counsel's Report.

The replacement page sets forth an expanded footnote 42, which addresses the investigation of these matters.

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during the same time as the advertisements.⁴¹ Moreover, this Office anticipates that the documentation will enable us to determine the total amount spent by the DNC, the Primary Committee, and the GEC for advertisements.⁴² Finally, the review of documents produced pursuant to the subpoenas will allow this Office to determine the best order in which to take depositions and to prepare the best questions to put to the deponents.

IV. RECOMMENDATIONS

1. Find reason to believe that the Democratic National Committee and Carol Pensky, as treasurer, made excessive contributions to the Clinton/Gore '96 Primary Committee, Inc. and President William J. Clinton in violation of 2 U.S.C. § 441a(a)(2)(A);
2. Find reason to believe that the Clinton/Gore '96 Primary Committee, Inc., its treasurer, Joan Pollitt, and President William J. Clinton accepted excessive contributions from the Democratic National Committee in violation of 2 U.S.C. § 441a(f);
3. Find reason to believe that the Clinton/Gore '96 Primary Committee, Inc., its treasurer, Joan Pollitt, and President William J. Clinton exceeded the expenditure limitation for the 1996 Presidential nominating process in violation of 2 U.S.C. §§ 441a(b)(1)(A) and (f) and 26 U.S.C. § 9035(a);
4. Find reason to believe that the Democratic National Committee and Carol Pensky, as treasurer, exceeded the coordinated party expenditure limitations in violation of 2 U.S.C. § 441a(f);
5. Find reason to believe that the Clinton/Gore '96 General Committee, Inc., its treasurer, Joan Pollitt accepted excessive contributions from the Democratic National Committee in violation of 2 U.S.C. § 441a(f);

⁴¹ This Office does not recommend seeking discovery from Bob Woodward. To overcome the journalist's privilege, which Mr. Woodward would certainly invoke, the Commission would have to show that it was unable to obtain the information sought from any other source. *Branzburg v. Hayes*, 408 U.S. 665 (1972); *N.L.R.B. v. Mortensen*, 701 F. Supp. 244 (1988). Until the fruits of discovery from other sources are evaluated, there is no purpose to be served by attempting to compel broad discovery from Mr. Woodward. This Office does not believe that the journalist's privilege protects Mr. Morris, who has knowledge of the events in question because he was a participant, not an investigative journalist.

⁴² Staff of this Office will coordinate our investigation of this matter with staff assigned to other enforcement matters involving the DNC or the Clinton/Gore '96 Committees. This Office at this time does not recommend that the Commission find reason to believe that any of the violations at issue were knowing and willful. See 2 U.S.C. §§ 437g(a)(5)(B), (6)(C), and (d)(1); *FEC v. John A. Dramesi for Congress Committee*, 640 F. Supp. 985 (D.N.J. 1986). However, the Commission is not precluded from making such a finding at a later point if facts are discovered which tend to support a finding of a knowing and willful violation(s).